

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90005

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 25, 2009

Complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a magistrate judge in the First Circuit. The complainant alleges wrongdoing in connection with his civil rights case.

The complainant alleges that the magistrate judge engaged in misconduct by mishandling the complainant's motion for default judgment. The complainant states that he filed the motion because the primary defendant had failed to file a responsive pleading and that, since it was a "procedural" matter, it should have been automatically allowed by the clerk. The complainant continues that the court, instead, issued an order to show cause requiring all of the parties to demonstrate the grounds for personal jurisdiction and venue. The complainant contends that the fact that the magistrate judge delayed in issuing this order (until prompted by the complainant's motion for default), and the length of time that the magistrate judge allotted the parties to respond to the order (32 days) are further evidence that the magistrate judge was "circumventing the Rules of Civil Procedure [and] advocating

for the defendants." The complainant concludes that the magistrate judge lacked legal authority to issue this order, that it was an abuse of discretion, and was effectively a motion to dismiss filed by the court on behalf of a non-appearing defendant.

The complainant further states that, when he brought these issues to the attention of the court by means of a "motion for articulation," the magistrate judge refused to justify or explain the order to show cause. Rather, the magistrate judge denied the complainant's motion, noting that he "understood [the court's] rulings perfectly." Finally, the complainant continues that he complied with the order to show cause by establishing jurisdiction and venue, renewed his motion for default judgment against the primary defendant, and filed additional motions (including a motion for preliminary injunction) on which the court refused to rule.

The complainant's allegations of misconduct are unsupported. The reviewed record indicates that, in the order to show cause (and an order reserving judgment on the motion for default), the magistrate judge explained that the case raises "serious questions" of venue, personal jurisdiction and sovereign immunity which made the court "reluctant to sua sponte either dismiss the case or order it transferred . . . without giving both sides an opportunity to be heard." In order to ensure proper service was made on the primary defendant, the court ordered the complainant to provide the address of the relevant counsel whom he had identified in the complaint, and gave the parties 30 days in which to demonstrate the grounds for personal jurisdiction and venue.

There is no information in this order, or elsewhere in the record of the case, suggesting that the magistrate judge was biased in favor of the defendants, or otherwise sought to subvert the success of the complainant's litigation. The complainant relies exclusively on the show cause order as purported evidence of judicial wrongdoing. Such an allegation -- "that is directly related to the

merits of a decision or procedural ruling [and] calls into question the correctness of a judge's ruling . . . , without more, is merits-related." See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h)(3)(A). Accordingly, the complaint is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

The same holds as true for the court's denial of the complainant's motion seeking clarification of the show cause order. Absence evidence of bias -- of which there is none -- the claim arises exclusively from an order with which the complainant disagrees and, therefore, is dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant's objection to the court's providing service of the show cause order to a "non-appearing defendant" is equally misplaced. The court was apparently attempting to ensure adequate notice to interested parties prior to dismissing or ruling on the complainant's case. This conduct was in no way "prejudicial to the effective and expeditious administration of the business of the courts" See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rules 11(c)(1)(A).

The fact that the magistrate judge issued the ruling only when prompted by the complainant's motion for default also does not suggest wrongdoing. The magistrate judge issued the order to show cause in response to the motion for default and fully explained the grounds for the order. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rules 11(c)(1)(A). Finally, the court has since ruled on the complainant's motions (pending at the time he filed the complaint) and the timeliness with which it did so was not remotely suggestive of misconduct. See id., and Rules

of Judicial Misconduct, Rules 3(h)(3)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90005 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

Date

4/25/09

Chief Judge Lynch

Sandra L. Lynch